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May 17, 2010

**VIA ELECTRONIC FILING**

Clerk, Superior Court of New Jersey  
William T. Walsh, Clerk  
District Court of New Jersey  
M.L. King, Jr. Federal Building & U.S. Courthouse  
50 Walnut Street  
Newark, New Jersey 07102

Re: **Prystowsky, et al v. TGC Stores, Inc., et al,**  
**Docket No. 2:07 c.v. 0072 (SDW) (MCA)**

Dear Sir/Madam:

Our firm represents Third Party Defendant, Carling Technologies, Inc., in the above matter. Enclosed for filing is the Answer to the Second Amended Third Party Complaint.

Please confirm that this Answer has been filed on behalf of the Third Party Defendant, Carling Technologies, Inc.

Very truly yours,  
DALY, LAMASTRA & CUNNINGHAM



William P. Cunningham

WPC:mpd  
Encl.

cc: Deborah A. Crinigan, Esq.  
Charles Eblen, Esq.  
Neil L. Sambursky, Esq.  
Matthew S. Schorr, Esq.  
Robert M. Kaplan, Esq.  
Charles L. Simmons, Jr., Esq.

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Attorneys for Third Party Defendant,  
Carling Technologies, Inc. i/p/a Carling  
Industries, Inc.

DR. MILTON PRYSTOWSKY, IN HIS OWN  
RIGHT AND AS EXECUTOR OF THE  
ESTATE OF ROSE PRYSTOWSKY,

Plaintiff,

v.

TGC STORES, INC.; ADT SECURITY  
SERVICES, INC.; INVACARE  
CORPORATION; GOLDEN BROTHERS, INC.  
D/B/A GOLDEN TECHNOLOGIES; PRIDE  
MOBILITY PRODUCTS CORP., JOHN DOES  
4-10;

Defendants,

and

PRIDE MOBILITY PRODUCTS CORP.,

Defendant/Third Party Plaintiff,

v.

DEWERT MOTORIZED SYSTEMS;  
PHOENIX MECANO, INC. and KINGSTEC  
INDUSTRIES, INC.; CARLING INDUSTRIES,  
INC., and JOHN DOES 1-10,

Third Party Defendants.

UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY - NEWARK  
DOCKET NO.: 2:07 c.v. 0072 (SDW) (MCA)

CIVIL ACTION

**ANSWER TO SECOND AMENDED  
THIRD PARTY COMPLAINT**

Third Party Defendant, Carling Technologies, Inc. by way of Answer to Second

Amended Third Party Complaint, says:

**ANSWER TO PARTIES COUNT**

1. Third Party Defendant admits the allegations contained in Paragraphs 1 and 2 of the Parties Count.

2. This Third Party Defendant denies the allegations contained in Paragraph 3 of the Parties Count.

3. The allegations set forth in Paragraph 4 of the Parties Count do not relate to this Third Party Defendant and said Third Party Defendant makes no answer hereto. If any of the allegations are deemed to relate to this Third Party Defendant, said allegations are denied.

4. Third Party Defendant admits the allegations contained in Paragraph 5 of the Parties Count.

#### **ANSWER TO JURISDICTION COUNT**

5. This Third Party Defendant repeats and reiterates its answers to all the allegations contained in all previous Counts as if fully set forth at length herein.

6. This Third Party Defendant denies the allegations contained in Paragraph 6 of the Jurisdiction Count.

7. Third Party Defendant admits the allegations contained in Paragraphs 7, 8, 9, 10, 11 and 12 of the Jurisdiction Count.

8. This Third Party Defendant denies the allegations contained in Paragraph 13 of the Jurisdiction Count.

#### **ANSWER TO THE UNDERLYING ACTION COUNT**

9. This Third Party Defendant repeats and reiterates its answers to all the allegations contained in all previous Counts as if fully set forth at length herein.

10. Third Party Defendant admits the allegations contained in Paragraphs 14, 15, 16, 17 and 18 of The Underlying Action Count.

11. This Third Party Defendant denies the allegations contained in Paragraphs 19, 20 and 21 of The Underlying Action Count.

12. Third Party Defendant admits the allegations contained in Paragraph 22 of The Underlying Action Count.

13. The allegations set forth in Paragraph 23 of The Underlying Action Count do not relate to this Third Party Defendant and said Third Party Defendant makes no answer hereto. If any of the allegations are deemed to relate to this Third Party Defendant, said allegations are denied.

#### **ANSWER TO FIRST CAUSE OF ACTION COUNT**

14. This Third Party Defendant repeats and reiterates its answers to all the allegations contained in all previous Counts as if fully set forth at length herein.

15. This Third Party Defendant denies the allegations contained in Paragraphs 25 and 26 of the First Cause of Action Count.

#### **ANSWER TO SECOND CAUSE OF ACTION COUNT**

16. This Third Party Defendant repeats and reiterates its answers to all the allegations contained in all previous Counts as if fully set forth at length herein.

17. This Third Party Defendant denies the allegations contained in Paragraphs 28 and 29 of the Second Cause of Action Count.

#### **FIRST AFFIRMATIVE DEFENSE**

Damages, if any, sustained by the plaintiffs were the result of the sole negligence of the plaintiffs.

#### **SECOND AFFIRMATIVE DEFENSE**

The damages of the plaintiffs, if any, are statutorily limited by the percentage of comparative negligence and, in the event this third party defendant is determined to have been

negligent, plaintiffs' and third party plaintiff's recoveries are barred or limited as provided by N.J.S.A. 2A:15-5.1, et seq.

### **THIRD AFFIRMATIVE DEFENSE**

Third Party Plaintiffs' Second Amended Third Party Complaint is barred by the Doctrine of Equitable Estoppel.

### **FOURTH AFFIRMATIVE DEFENSE**

Plaintiffs' Second Amended Complaint fails to state a cause of action upon which relief can be granted.

### **FIFTH AFFIRMATIVE DEFENSE**

Plaintiffs failed to mitigate their damages.

### **SIXTH AFFIRMATIVE DEFENSE**

Any and all injuries and damages sustained by the plaintiffs were the proximate result of the negligent acts of third persons, natural and corporate, over whom this Third Party Defendant exercised no control and for whose actions this Third Party Defendant is not legally responsible.

### **SEVENTH AFFIRMATIVE DEFENSE**

This Third Party Defendant denies that it was guilty of any negligence which was the proximate cause of any injuries or damages alleged to have been sustained by the plaintiffs or third party plaintiffs.

### **EIGHTH AFFIRMATIVE DEFENSE**

The product or instrumentality allegedly involved in plaintiffs' accident, having been completely under the control of persons other than this Third Party Defendant, this Third Party Defendant denies that it had any knowledge of any allegedly defective condition, or opportunity to correct same if, in fact, it did exist.

**NINTH AFFIRMATIVE DEFENSE**

This Third Party Defendant specifically denies that it designed, manufactured, or was in any way involved with the product referred to in third party plaintiffs' Second Amended Third Party Complaint or any of such product's component parts.

**TENTH AFFIRMATIVE DEFENSE**

The incident and injuries complained of were caused by the unauthorized, unintended or improper use of the product complained of as the result of plaintiffs' and/or third party plaintiffs' failure to exercise reasonable and ordinary care and caution.

**ELEVENTH AFFIRMATIVE DEFENSE**

This Third Party Defendant owed no duty by way of warranty, strict liability or tort to the plaintiffs.

**TWELFTH AFFIRMATIVE DEFENSE**

Plaintiffs' Amended Complaint and Third Party Plaintiff's Second Amended Third Party Complaint are governed by the provisions in the Product Liability Act, N.J.S.A. 2A:58C-1 et seq., and this Third Party Defendant asserts all of the defenses available to it as set forth in said Act.

**ANSWER TO CROSSCLAIMS**

This Third Party Defendant denies each and every allegation of any and all Crossclaims which have been or may be asserted against this Third Party Defendant.

WHEREFORE, said Third Party Defendant demands judgment dismissing any and all Crossclaims, with counsel fees and costs.

**CERTIFICATION**

I certify that the foregoing Answer to the Second Amended Third Party Complaint was served within the time allowed under Federal Rules of Civil Procedure 12.

Upon information and belief, the matter in controversy is not the subject of any other action pending in any Court nor the subject of a pending arbitration proceeding.

DALY, LAMASTRA & CUNNINGHAM  
Attorneys for Third Party Defendant  
Carling Technologies, Inc.



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William P. Cunningham

DATED: May 17, 2010

CERTIFICATION

Marylu P. DiBisceglie, being duly sworn according to law and upon her oath, deposes and says:

(1) That I am a secretary in the office of DALY, LAMASTRA & CUNNINGHAM, attorneys for the Third Party Defendant, Carling Technologies, Inc. in this action.

(2) On May 17, 2010, I caused to be mailed via Electronic Filing, an ANSWER TO THE SECOND AMENDED THIRD PARTY COMPLAINT, an original of which was filed with the Clerk of the United States District Court, and a copy addressed to:

Deborah A. Crinigan, Esq.  
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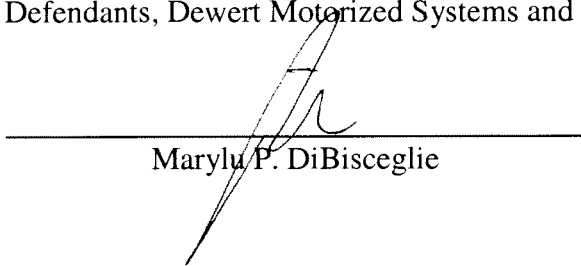
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Marylu P. DiBisceglie